

## **REMARKS**

The above amendments and these remarks are responsive to the Office action dated November 21, 2006. Claims 1-5 are pending in the application. Claims 1-5 are rejected. Applicants have amended claim 1. In view of the above amendments and the following remarks, Applicants request reconsideration of the rejected claims under 37 C.F.R. § 1.111.

### ***Information Disclosure Statement***

The Examiner indicates in the Office Action that the Information Disclosure Statement filed on April 3, 2006 has not been considered. Applicants note that the Examiner has indicated consideration of the references by initialing the Form PTO-1449 attached to the Information Disclosure Statement. Applicants respectfully request that the Examiner confirm that the submitted references were considered, and will be made of record and appear among the "references cited" on any patents issuing from the present application.

### **Rejections under 35 USC § 102**

Claim 1 is rejected under 35 U.S.C. § 102(b) as being anticipated by Haddock et al. (U.S. Patent No. 5,989,683). Applicants respectfully disagree.

The wireless polymeric twist tie of Haddock et al. includes a 'rib' portion 12 and a wing portion 14. The Examiner suggests that the rib portion 12 corresponds to the core of claim 1. Applicants disagree, and suggest that the twist tie of claim 1 differs significantly in structure from the alternating rib and wing construction of Haddock et al.

However, in the interest of claiming the invention with more particularity, Applicants have amended claim 1 to indicate that the core part and the wing part of the tie extend the length

of the tie. As construed by the Examiner, neither the rib portion nor the wing portion of the twist tie of Haddock et al. extends the length of the twist tie.

In view of the above amendment and remarks, Applicants suggest that the Haddock et al. reference fails to anticipate the twist tie of claim 1.

Claim 1 is rejected under 35 U.S.C. § 102(b) as being anticipated by Kincel et al. (U.S. Patent No. 6,372,068). Claim 1 is further rejected under 35 U.S.C. § 102(b) as being anticipated by Contreras et al. (U.S. Patent No. 7,011,879). Applicants respectfully disagree.

Both Kincel et al. and Contreras et al. disclose composite polymeric twist ties. Both Kincel et al. and Contreras et al. stress the importance of the disclosed twist ties to maintain a twist and permit retwisting. The ability of a twist tie to meet these criteria is measured using the so-called "dead fold test," where the tie is folded 180 degrees, and then permitted to relax for three minutes. The "dead fold test" is depicted schematically in Figs. 10 and 11 of Contreras et al., reproduced below.

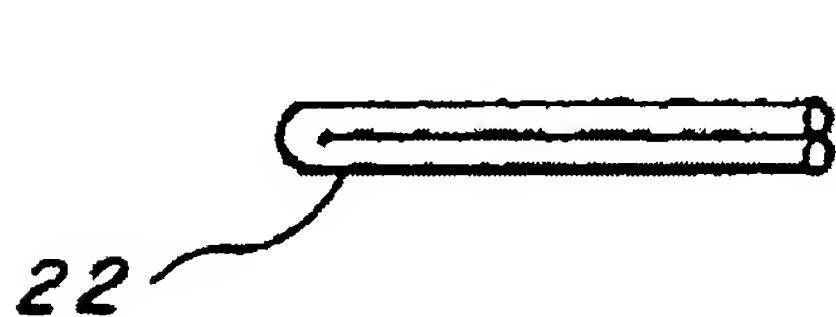


FIG. 10

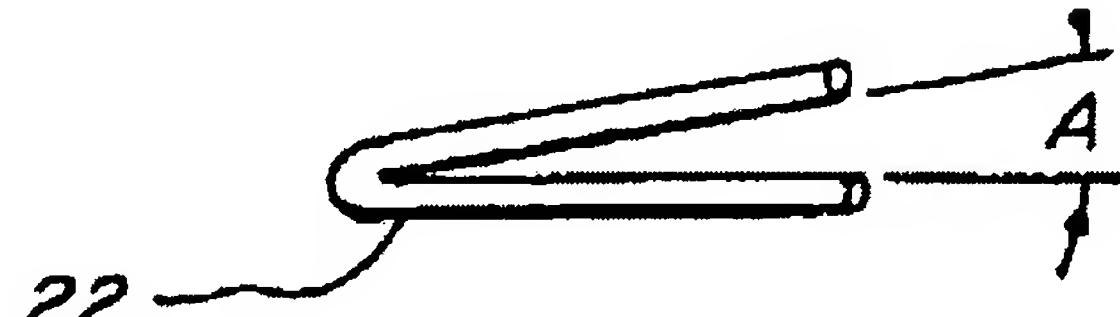


FIG. 11

According to both Kincel et al. and Contreras et al., an acceptable tie is one that exhibits a dead fold angle of no greater than 10 degrees, and when relaxed for three minutes retains this 10 degree angle. Kincel states that the twist tie "must employ" material with this characteristic,

and both Kincel et al. and Contreras et al. indicates that this property is required to make the tie "entirely acceptable for this application" (see Kincel et al. at col. 6, lines 9-32; see Contreras et al. at col. 4, lines 10-27).

In contrast, Applicants have determined that a desirable twist tie is one that neither retains a fixed shape permanently, nor relaxes too extensively. This is particularly true where the twist tie is wound on a reel for use in a binding machine, as shown in Fig. 4, and discussed at page 8, para. 2 to page 9, para. 5. Specifically, as stated at page 13, paragraph 4, "when the property of retaining a fixed shape was less than 70%, there were many cases where disjoining of the tie 1 from the reel 2a was induced while, when it was more than 95%, the recovering force is poor whereby frequency of slipping down into the gap and tangling and twining of the lines was much."

To more particularly define their invention. Applicants have amended claim 1 to recite a twist tie having a property of retaining a fixed shape of 95% or less. Support for the amendment is found at page 13, para. 5. Applicants suggest that the Kincel et al. and Contreras et al. references fail to disclose the requirement that a twist tie has a property of retaining a fixed shape of 95% or less, fail to disclose a twist tie exhibiting a property of retaining a fixed shape of 95% or less, and fail to suggest the desirability of a twist tie having a property of retaining a fixed shape of 95% or less. More specifically, Applicants note that rather than exhibiting relaxation of the fold angle within at most two minutes, as where the property of retaining a fixed shape is less than 100%, the Kincel et al. and Contreras et al. references describe a twist tie that *retains* the fold angle for at least three minutes.

In order to anticipate a claimed invention, the prior art reference must disclose each and every element of the claim as set forth in the claim. In view of the amendments and remarks

above, Applicants suggest that neither Haddock et al., Kincel et al., nor Contreras et al. anticipate the invention of claim 1. Applicants therefore respectfully request the withdrawal of the rejections of claim 1 under 35 U.S.C. § 102(b).

### ***Rejections under 35 USC § 103***

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haddock et al., or Kincel et al. The Examiner suggests that it would have been obvious to one of ordinary skill in the art at the time the invention to formulate the twist ties of claims 2-5, since the twist ties of Haddock et al. and Kincel et al. meet all of the structural limitations and are made from the same materials being claimed. Applicants respectfully disagree.

As discussed above, neither Haddock et al. nor Kincel et al. disclose each and every element of claim 1, as amended. Therefore, neither Haddock et al. nor Kincel et al., disclose each and every element of dependent claims 2-5. As *prima facie* obviousness cannot be established where the references fail to disclose every element of the claims, Applicants suggest the references fail to render the claimed twist ties obvious.

Furthermore, there is no motivation or suggestion to modify the twist tie of Haddock et al. so as to arrive at the claimed twist tie of claim 1. As set out in a variety of embodiments, the twist ties of Haddock et al. feature an alternating series of rib portions and wing portions. Modifying the reference so as to arrive at a twist tie having a core part and a wing part that extend the length of the twist tie would change the principle of operation of the reference. Therefore, the reference must necessarily fail to provide sufficient motivation to modify the reference as suggested by the Examiner, and must therefore fail to establish the *prima facie* obviousness of the twist ties of dependent claims 2-5.

There is similarly no motivation or suggestion to modify the twist tie of Kincel et al. As stated at col. 6, lines 25-32 "It is therefore expedient that the invention *must* employ, a monofilament material that has the characteristics that exhibit a so called dead fold angle of no greater than 10 degrees when folded in half, with the ends touching, and, when relaxed *retaining this 10 degree angle for minimum period of three minutes* making it entirely acceptable for this application" (emphasis added).

Applicants suggest that the reference strongly suggests the desirability of a twist tie that exhibits little or no relaxation in a fixed shape once formed, whereas the twist ties of claim 1 exhibit a property of retaining a fixed shape of 95% *or less*. Not only is a twist tie having a high shape retention unsuitable for use with a binding machine, as discussed above, but the Kincel et al. reference must necessarily fail to suggest the modification of the twist ties to render them less retentive of a fixed shape. The Kincel et al. reference must therefore fail to establish the *prima facie* obviousness of the twist ties of dependent claims 2-5.

In view of the above amendments and remarks, Applicants respectfully request the withdrawal of the rejections of claims 2-5 under 35 U.S.C. § 103(a).

It is believed that the subject patent application has been placed in condition for allowance, and such action is respectfully requested. If the Examiner has any questions or concerns, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned agent of record.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 11-1540.

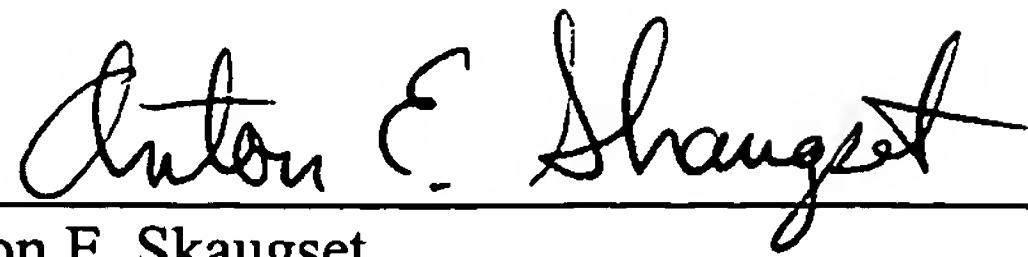
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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on March 2, 2007.

  
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